

Office of the Secretary, Interior

§ 4.236

Subscribed and sworn to before me this _____ day of _____, 19____, by _____ testator/testatrix, and by _____ and _____; attesting witnesses.

(Title)

If uncontested, a self-proved will may be approved and distribution ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined. If none of the attesting witnesses resides in the reasonable vicinity of the place of hearing at the time appointed for proving the will, the OHA deciding official may admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will and, as evidence of the execution, the OHA deciding official may admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them. The provisions of § 4.232 are applicable with respect to remaining issues.

§ 4.234 Witnesses, interpreters, and fees.

Parties in interest who desire a witness to testify or an interpreter to serve at a hearing must make their own financial and other arrangements therefor, and subpoenas will be issued where necessary and proper. The OHA deciding official may call witness and interpreters and order payment out of the estate assets of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts. In hardship situations, the OHA deciding official may order payment of per diem and mileage for indispensable witnesses and interpreters called for the parties. In the order for payment he or she must specify whether such costs are to be allocated and charged against the interest of the party calling the witness or against the estate generally. Costs of

administration so allowed will have a priority for payment greater than that for any creditor claims allowed. Upon receipt of such order, the Superintendent must immediately initiate payment of such sums from the estate account, or if such funds are insufficient, then out of funds as they are received in such account prior to closure of the estate, with the proviso that such costs must be paid in full with a later allocation against the interest of a party, if the OHA deciding official has so ordered.

§ 4.235 Supplemental hearings.

After the matter has been submitted but prior to the time the OHA deciding official has rendered his or her decision, the OHA deciding official may upon his or her own motion or upon motion of any party in interest schedule a supplemental hearing if he or she deems it necessary. The notice must set forth the purpose of the supplemental hearing and must be served upon all parties in interest in the manner provided in § 4.211. Where the need for such supplemental hearing becomes apparent during any hearing, the OHA deciding official may announce the time and place for such supplemental hearing to all those present and no further notice need be given. In that event the records must clearly show who was present at the time of the announcement.

§ 4.236 Record.

(a) After the completion of the hearing, the OHA deciding official will make up the official record containing:

(1) A copy of the posted public notice of hearing showing the posting certifications;

(2) A copy of each notice served on interested parties with proof of mailing;

(3) The record of the evidence received at the hearing, including any transcript made of the testimony;

(4) Claims filed against the estate;

(5) Will and codicils, if any;

(6) Inventories and valuations of the estate;

(7) Pleadings and briefs filed;

(8) Special or interim orders;

(9) Data for heirship finding and family history;

§ 4.240

(10) The decision and the notices thereof; and

(11) Any other material or documents deemed material by the OHA deciding official.

(b) The OHA deciding official must lodge the original record with the designated Land Titles and Records Office in accordance with 25 CFR part 150. A duplicate copy must be lodged with the Superintendent originating the probate. A partial record may also be furnished to the Superintendents of other affected agencies. In those cases in which a hearing transcript has not been prepared, the verbatim recording of the hearing must be retained in the office of the OHA deciding official issuing the decision until the time allowed for rehearing or appeal has expired. In cases in which a transcript is not prepared, the original record returned to the Land Titles and Records Office must contain a statement indicating no transcript was prepared.

DECISIONS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.240 Decision of the OHA deciding official and notice thereof.

(a) The OHA deciding official must decide the issues of fact and law involved in the proceedings and must incorporate the following in his or her decision:

(1) In all cases, the names, birth dates, relationships to the decedent, and shares of heirs with citations to the law of descent and distribution in accordance with which the decision is made; or the fact that the decedent died leaving no legal heirs.

(2) In testate cases, (i) approval or disapproval of the will with construction of its provisions, (ii) the names and relationship to the testator of all beneficiaries and a description of the property which each is to receive;

(3) Allowance or disallowance of claims against the estate;

(4) Whether heirs or devisees are non-Indian, exclusively alien Indians, or Indians whose property is not subject to Federal supervision.

(5) A determination of any rights of dower, curtesy or homestead which

43 CFR Subtitle A (10-1-04 Edition)

may constitute a burden upon the interest of the heirs.

(b) When the OHA deciding official issues a decision, he or she must issue a notice thereof to all parties who have or claim any interest in the estate and must mail a copy of said notice, together with a copy of the decision to the Superintendent and to each party in interest simultaneously. The decision will not become final and no distribution may be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in § 4.241.

§ 4.241 Rehearing.

(a) Any person aggrieved by the decision of the OHA deciding official may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the OHA deciding official a written petition for rehearing. Such petition must be under oath and must state specifically and concisely the grounds upon which it is based. If the petition is based on newly-discovered evidence, it must be accompanied by affidavits or declarations of witnesses stating fully what the new testimony is to be. It must also state justifiable reasons for the failure to discover and present that evidence, tendered as new, at the hearings held prior to the issuance of the decision. The OHA deciding official, upon receiving a petition for rehearing, must promptly forward a copy to the Superintendent. The Superintendent must not initiate payment of claims or distribute the estate while such petition is pending, unless otherwise directed by the OHA deciding official.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the OHA deciding official will issue an order denying the petition and must set forth therein his or her reasons therefor. The OHA deciding official must furnish copies of such order to the petitioner, the Superintendent, and the parties in interest.

(c) If the petition appears to show merit, the OHA deciding official must cause copies of the petition and supporting papers to be served on those persons whose interest in the estate